

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 DANYAL SHAIKH * 4:16-CV-00591
5 V. *
6 TEXAS A&M UNIVERSITY * 10:59 A.M. to 11:41 A.M.
7 COLLEGE OF MEDICINE *
8 * APRIL 10, 2019

9 CONFERENCE IN CHAMBERS
10 BEFORE THE HONORABLE LYNN N. HUGHES
11 Volume 1 of 1 Volume

12 APPEARANCES

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30 Proceedings recorded by mechanical stenography.
31 Transcript produced by computer-assisted transcription.

1

PROCEEDINGS

2

MS. TERRELL: Holly Terrell for the plaintiff.

3

MS. ARDOLINO: Emily Ardolino from the Attorney

4

General's office representing the defendant.

10:59:46

5

MR. SILVER: Tom Silver. I am with the General

6

Counsel A&M System.

7

THE COURT: I have a grandson at A&M. So do your

8

job right.

9

MR. SILVER: We try. I have a daughter and a son

11:00:02

10

that just graduated.

11

THE COURT: Congratulations. That graduation

12

part is really nice.

13

MR. SILVER: Yes.

14

THE COURT: Until they say something about

11:00:11

15

graduate school. I didn't go there, but I am an admirer

16

of what they accomplish.

17

So where are we?

18

MS. TERRELL: We have been discussing discovery

19

between Emily and I and Marty, as well; and we have come

11:00:53

20

to some agreements. So we are ready to see if this will

21

work.

22

THE COURT: Well, can you give me a hint about

23

what it is you think you need to do?

24

MS. TERRELL: I can. We talked about six months

11:01:06

25

for discovery.

1 THE COURT: What?

2 MS. TERRELL: Six months for discovery.

3 THE COURT: No. I can't say six months. I need
4 to know exactly what it is that you are missing that you
5 want to do.

11:01:15

6 MS. TERRELL: Plaintiffs would like to send
7 interrogatories and requests for production.

8 THE COURT: About what? I need a fact that you
9 think exists or would like to know whether it exists.

11:01:30

10 What facts are you seeking to establish?

11 MS. TERRELL: We're seeking to confirm our
12 allegations that our client was dismissed for improper
13 purposes.

14 THE COURT: We know the mechanics of the
15 dismissal.

11:01:49

16 MS. TERRELL: Yes.

17 THE COURT: All right. So he was somebody who
18 withdrew the end of the first year -- the end of the first
19 year?

11:02:01

20 MS. ARDOLINO: End of the second year.

21 MS. TERRELL: The second year.

22 THE COURT: End of the second year. Then there
23 were tests and everything and application for admission
24 and they said no.

11:02:15

25 MS. TERRELL: Correct.

1 THE COURT: Okay. Now, it seems to me what you
2 need to know is somebody similarly situated, a
3 re-applicant, after having withdrawn, who was not troubled
4 with whatever the limitations your client has, who was
5 admitted.

11:02:46

6 MS. TERRELL: That would be helpful, yes.

7 THE COURT: Well, that's the only data that
8 counts. How many people are in the medical school class?

9 MR. SILVER: Maybe around 100. So -- I'm a
10 client. I'm not supposed to talk.

11:03:06

11 THE COURT: Technically, that's true.

12 MS. ARDOLINO: But he can supply information
13 where I don't have it.

14 MR. SILVER: Well, it seems to me --

15 THE COURT: That's why I think I ought to have
16 the paralegals here every time. They know everything.

11:03:14

17 MR. SILVER: I used to be a lawyer in real life.

18 THE COURT: Where did you practice?

19 MR. SILVER: In Corpus Christi with Hunt,
20 Hermansen, McKibben and Barger.

11:03:29

21 THE COURT: Well, Hayden Head tells me that Head
22 is the only good firm.

23 MR. SILVER: Well, that is -- Hayden is a fishing
24 friend of mine down there. He is a very good fly
25 fisherman.

11:03:41

1 THE COURT: For you young people, Hayden Head is
2 a retired judge in Corpus. The airport is named for
3 Hayden Head for his father, who is also a lawyer and a
4 very fine fellow.

11:03:54

5 I asked Hayden one day -- he said he was fishing a
6 lot -- and I said, Hayden, fishing doesn't seem like
7 something for someone as impatient as you are to find
8 recreational.

11:04:17

9 He said, It's great. It's the only thing I don't care
10 whether I succeed. It is just being there and doing it.

11 MR. SILVER: Well, he and his friends, that are
12 all mutual, catch a lot of fish. He doesn't go out very
13 often and not catch them, to be honest.

11:04:37

14 MS. TERRELL: Fly-fishing is different than
15 normal fishing.

16 THE COURT: He is just lucky.

17 MR. SILVER: Yeah. There is a lot of fish down
18 there, too. That helps.

11:04:45

19 So, Your Honor, it seems to me that the Court of
20 Appeals only left the ADA claim about whether, you know,
21 that had anything. He voluntarily withdrew, and he is
22 claiming a constructive discharge from school after he
23 didn't take the test again after so many opportunities and
24 then --

11:05:06

25 THE COURT: But that went away.

1 MS. ARDOLINO: That's correct. So the Fifth
2 Circuit left just the rehab, the Rehabilitation Act claim
3 and dismissed the ADA claim.

11:05:20

4 So really the issues are this constructive dismissal
5 and whether the medical school intentionally discriminated
6 against him by this constructive dismissal, which was
7 actually his withdrawal, and then the readmission issues,
8 which was whether or not they intentionally discriminated
9 against him in not readmitting him.

11:05:40

10 THE COURT: But it has to be based -- he can't
11 compare himself to a college graduate who -- where did he
12 go to undergraduate school?

13 MS. TERRELL: I am not sure.

14 MR. SILVER: He went to A&M.

11:05:55

15 THE COURT: All right. So another A&M senior who
16 has applied to medical school. That's not what we have
17 here. We have an A&M graduate who applied to medical
18 school, got in for two years, withdrew, and there is no
19 question he was having problems with the school. Not with
20 the school but with the schoolwork. Is that not true?

11:06:15

21 MS. TERRELL: Due to his disability, yes.

22 THE COURT: Ma'am, he was having problems. That
23 he is having problems, how is that a constructive
24 discharge? He couldn't do the work.

11:06:37

25 MS. TERRELL: Because the issues were a result of

1 his disability.

2 THE COURT: You still have to -- remember, you
3 still have to be able to do the job. I am acting like --
4 I guess medical school is a job. I have people who file
5 an employment discrimination claim and say that they are
6 permanently disabled because of it and -- well, and that
7 they say that they are ready, willing, and able to do it;
8 but it turns out that nine months, a year before, they
9 applied for permanent total disability with Social
10 Security and got it awarded.

11 So in that case, the answer is simple. You can't
12 swear and take money with the facts being A and claim, no,
13 they are really B.

14 In this case, as I recall, he was referred to a
15 psychologist or a physiologist and I know he didn't like
16 some of the doctors and that may have been correlated
17 strongly with whether they said what he wanted them to
18 say. But my recollection is the school was not
19 indifferent.

20 Just so you know, I have ruled against A&M in an
21 accommodation case. So I like them, but I'm not going to
22 do anything for them.

23 MS. ARDOLINO: And I think that was the fact
24 issue that was remanded here by the Fifth Circuit is
25 whether or not the passage of this test, this step one

1 test, was an essential function of the medical program
2 and --

3 THE COURT: And I'm supposed to decide that.

11:08:45

4 MS. ARDOLINO: Correct. But that is one of the
5 issues that is -- that is here on remand. And so it's
6 certainly A&M's contention that it is an essential part of
7 the program.

8 THE COURT: So there has got to be data, studies,
9 and articles about why it's important.

11:09:00

10 MS. ARDOLINO: It's a licensing requirement, and
11 it is a professional program.

12 THE COURT: From Texas?

13 MR. SILVER: I think it's nationwide.

11:09:14

14 MS. ARDOLINO: I think it is nationwide but
15 certainly the medical licensing --

16 THE COURT: That would cover Texas.

17 MS. ARDOLINO: -- would be in Texas. Although, I
18 guess he could theoretically apply for medical license
19 outside of Texas. But the exam itself is a national exam.

11:09:27

20 I think the U and the S in the first two letters of it
21 stand for United States. And it is a regular part of, I
22 believe, probably all accredited medical school programs.

23 THE COURT: She and I don't know that.

24 MS. ARDOLINO: Right. So that would --

11:09:45

25 THE COURT: So ask one of your doctor slash

1 administrators to get the shortest, most precise
2 explanation of the role that this exam plays at A&M and
3 elsewhere. So we have three levels: A&M, Texas, and the
4 United States. And apparently, with some things, if you
5 keep the United States happy, it takes care of the others,
6 but that's not true of a lot of things, such as a driver's
7 license and commercial truck drivers.

8 MS. TERRELL: Your Honor, I think something very
9 pertinent in the facts is at this point my client is being
10 treated properly and he is able and willing and ready to
11 perform these functions. So he has gotten better.

12 THE COURT: Wait. His lawsuit is about what they
13 did back then. If he could pass the test now, it doesn't
14 count. He couldn't pass it at the time. And I forget he
15 went and stayed out for a year, and did he take the test
16 again?

17 MR. SILVER: He did. He stayed out. They gave
18 him more than a year and he would -- he failed to take the
19 test when he said he was going to take it and never took
20 it again after failing it the first time.

21 THE COURT: How many people do you -- does that
22 happen often?

23 MR. SILVER: No. When they do fail then, you
24 know, the school gives them additional time to study
25 because if you don't pass that step test, you don't get to

1 go on. It is -- you know, you are dead in the water. You
2 are not going to go to medical school if you can't pass
3 that.

11:11:48

4 And the other thing that -- you know, we had a motion
5 about this. He waived reinstatement, the claim for
6 reinstatement at the Fifth Circuit, and this Court denied
7 their request to reinstate that claim.

11:12:11

8 THE COURT: As much as I'd like to reverse the
9 Court of Appeals, I can't do it. I had a case where the
10 City of Houston waived limitations in the Houston Fire
11 Department Fair Labor Standards Act case which made the
12 period go eight years instead of two, and they wanted me
13 to unwaive it. I can't do that.

11:12:37

14 MS. ARDOLINO: Your Honor, from the defendants'
15 perspective, in terms of discovery that will be needed and
16 kind of what is remaining, we are looking at Mr. Shaikh's
17 medical records to -- for him to either execute a medical
18 records authorization or for him to provide them directly
19 to --

11:12:56

20 THE COURT: First, he needs to furnish a list of
21 every medical provider.

22 MS. ARDOLINO: Correct.

23 THE COURT: Whether a physician or counselor or
24 spiritual stuff.

11:13:13

25 MS. TERRELL: Yes, Your Honor.

1 THE COURT: I used to limit it just to medical
2 personnel and then somebody said --

3 MS. ARDOLINO: They can come in all forms.

11:13:21

4 THE COURT: -- well, I can't work on Tuesdays and
5 Thursdays because I go to see my priest to get over this
6 terrible thing. So anything he does for comfort and
7 rehabilitation.

8 MS. TERRELL: Yes, sir.

11:13:33

9 MS. ARDOLINO: Then the other remaining issue
10 would be his damages, and that would be he is currently
11 enrolled in -- it's our understanding, anyway, that he is
12 currently enrolled in another medical school. So we would
13 be looking at --

14 THE COURT: Is that true?

11:13:47

15 MS. TERRELL: Yes, Your Honor.

16 THE COURT: Which one?

17 MS. TERRELL: It's out of the country. I can't
18 recall the name of it right now. But he had to go outside
19 the U.S.

11:13:55

20 THE COURT: That's good. I say that's good
21 because he is getting ahead.

22 MS. TERRELL: He is doing very well.

23 THE COURT: The doctor I saw this morning was
24 born in Italy. She was brought here as a small child by
25 her Italian doctor father.

11:14:07

1 MS. ARDOLINO: So we would be looking for his
2 current medical school records and his applications to
3 other medical schools and then --

11:14:21

4 THE COURT: And get the translation, if they
5 happen not to be in English.

6 MS. ARDOLINO: Yes. And then any other documents
7 related to his claims for damages. And those are -- and
8 that coupled with we would, of course, want to take the
9 plaintiff's deposition and it's possible --

11:14:34

10 THE COURT: We have to get all the records first.

11 MS. ARDOLINO: Correct. Correct. And it's also
12 possible, depending on the contents of the medical
13 records, that we may want to depose some of his treating
14 physicians. So that's a possibility, though.

11:14:51

15 THE COURT: Can we get them?

16 MS. ARDOLINO: Yes.

11:15:09

17 THE COURT: My practice is we figure out what
18 really happened and what the facts are and then we decide
19 who to question further. And when that's all through,
20 then we get the experts, so-called experts most of the
21 time.

11:15:44

22 So his deposition, what may be the most sensible thing
23 to do is to find out from him when he will be back in the
24 country so he doesn't have to pay for the trip extra. But
25 you don't even need to ask that. I think you ought to ask

1 him to tell you whenever he is coming back so that if
2 there is something that has come up we could take care of
3 it.

11:16:20

4 What we need is some idea of the frequency with which
5 people retake the exams and frequency of people who drop
6 out after having not passed the first one and who apply
7 for readmission and who don't.

11:16:46

8 Mr. Silver, if any of this would cost a fortune to
9 come up with, tell them to come up with the best data
10 that's reasonably available --

11 MR. SILVER: Okay.

12 THE COURT: -- for the test, for this process
13 of -- so it's like an interim bar exam?

14 MS. ARDOLINO: In a way.

11:17:02

15 THE COURT: In the middle of your second year of
16 law school you have to take the bar exam.

17 And how about some general statistics on the attrition
18 rate of medical students. I have no idea.

19 MR. SILVER: At A&M?

11:17:27

20 THE COURT: Yes. Well, if you want to pick some
21 comparators, it probably should be alternate large state
22 universities and not private schools or self freestanding
23 medical schools.

24 MR. SILVER. Can I ask one question?

11:17:49

25 THE COURT: Sure.

1 MR. SILVER: In regard to the medical
2 providers --

3 THE COURT: Speak up. She is getting old.

11:17:59

4 MR. SILVER: In regard to the medical providers,
5 from past experience, the Court may be issuing some kind
6 of an order memorializing what your -- what we're going to
7 do. Could we have any type of medical provider or
8 whatever it is for ten years back?

11:18:18

9 THE COURT: It will be -- how old is he, roughly?
10 30?

11 MS. TERRELL: Roughly, late 20s.

11:18:40

12 THE COURT: For his entire life because if he
13 fell off his tricycle at three and that's what has caused
14 the nerve damage. And what he needs to do is put down the
15 date, roughly. Just not everybody keeps a precise record
16 of when they have seen doctors. Usually if you go other
17 than annually, you are preoccupied. But the date, where,
18 what the problem was, and the doctor's name, all to the
19 extent he can remember.

11:19:04

20 But he has to work on it because it's not something
21 that he can recall all at once. And so just make a list
22 and then tell him to set it down. And then every time he
23 thinks of something else to add, he can stick it on there.

11:19:31

24 And that -- again, doctors include chiropractors,
25 psychologists, sub-psychologists, psychotherapy people.

1 There are all kinds of -- there are about nine kinds of
2 nurses now, which ultimately is really good because now
3 they can legally do a lot of stuff they were always doing
4 anyway.

11:20:12

5 A&M has his undergraduate records?

6 MR. SILVER: Yes, Your Honor.

7 THE COURT: Do you need my permission to look at
8 them?

11:20:27

9 MR. SILVER: I think we can look at them
10 ourselves if they relate to his schooling.

11 THE COURT: That's what I would think.

12 MR. SILVER: Since this is, you know, in
13 litigation, you know, I think we could provide them to the
14 other side.

11:20:41

15 THE COURT: She is him.

16 MR. SILVER: He could execute a FERPA
17 authorization and let anyone look at his --

18 THE COURT: You look at them. She will look at
19 them, and my guess is -- I don't know.

11:20:56

20 MS. ARDOLINO: And I think the key would be to
21 the extent that those undergraduate records relate to his
22 medical school applications that I think they would be
23 relevant in that context, which we may already have in the
24 context of his applications.

11:21:12

25 THE COURT: Well, he had earlier accommodations.

1 MS. ARDOLINO: Understood.

2 THE COURT: So I don't -- you won't know what you
3 want until you get to look at the records and see what
4 they reflect.

11:21:38 5 Is he working? Before he went abroad, was he working?

6 MS. TERRELL: I am not aware of him working. I
7 don't think so.

8 THE COURT: Check to see how he survived. So if
9 he withdrew, that was not an act of the school; but the
11:22:35 10 Court of Appeals said if his withdrawal was, as a
11 practical matter, compelled by the lack of
12 accommodation --

13 MS. ARDOLINO: I think they said that he
14 plausibly pleaded on the face of the pleadings sort of a
11:22:53 15 constructive withdrawal, so to speak.

16 THE COURT: How about generously and not
17 plausibly.

18 MS. TERRELL: Your Honor, I would like to add
19 that, as stated in our pleadings, the plaintiff was about
11:23:43 20 to be dismissed from medical school and our allegation is
21 that he was told to withdraw or be dismissed.

22 THE COURT: He chose one. He is stuck with his
23 choice, isn't he?

24 MS. ARDOLINO: And I do believe that it's, as
11:24:10 25 pleaded, he chose to withdraw in order to preserve his

1 right to reapply in the future. Because if it had been a
2 dismissal, he would not necessarily be eligible for
3 readmission. So he was technically eligible for
4 readmission, reapplied competitively, but then was not
5 selected to join the new classes.

11:24:31

6 THE COURT: So from there, from his first
7 session, he quit, studied, reapplied --

8 MS. ARDOLINO: Correct.

9 THE COURT: -- and was not chosen.

11:24:50

10 MS. ARDOLINO: That's correct.

11 THE COURT: And then the real problem is not
12 being selected the second time.

13 MS. ARDOLINO: That's right.

14 THE COURT: Because that -- he is not injured
15 but -- I mean, the problem is you have a factual thing
16 here. He flunked the test, right?

11:25:09

17 MS. TERRELL: I can't recall if he failed it or
18 he didn't take it.

19 MR. SILVER: He did not pass it the first time.

11:25:29

20 MS. TERRELL: Okay.

21 THE COURT: He flunked it. Then he declined
22 invitations to retake it. So he had to do -- he had to
23 retake it and pass it or he couldn't go ahead. They
24 wouldn't have had any choice. You have a second-year
25 medical student who has not passed the interscholastic

11:25:57

1 test and has not retaken it, despite the opportunity.

2 Who was on the panel? Do you remember?

3 MS. ARDOLINO: I believe it was Edith Clement
4 dissented and -- actually, I probably have a copy of it
5 here -- and the --

11:26:41

6 LAW CLERK: You have a copy of it underneath the
7 docket sheet.

8 THE COURT: Thank you.

9 MS. ARDOLINO: Dennis and Graves and Clement
10 issued -- were on the panel. It's a per curiam opinion
11 and Judge Clement dissented.

11:26:55

12 THE COURT: Judge Dennis is/was my law partner's
13 brother-in-law, not that that has anything to do with his
14 opinion. It seems kind of telling in this per curiam the
15 number of citations per page is a law review confection.
16 The first paragraph of Page 8 is almost impossible to
17 read. It has one, two, three, four, five, six, seven,
18 eight -- I may have missed a couple of citations -- in a
19 half-page paragraph.

11:27:58

20 So get the data on withdrawals, readmissions, failure
21 to be readmitted or not accepted and the number of
22 students, maybe the number of students who don't pass and
23 therefore have to take it again or give up. Just pick
24 some -- I mean, ten years of data would be a chunk. But
25 if five years is all that is available, just the best that

11:28:38

11:29:18

1 you can do so I can have some background on this.

2 Have you read this *Brennan v. Stewart* case that the
3 Court of Appeals cited about otherwise qualified?

4 MS. ARDOLINO: Not recently.

11:31:11

5 THE COURT: The quote is cannot -- otherwise
6 qualified cannot refer only to those already capable of
7 meeting all requirements. Then it goes on that otherwise
8 nobody would ever be -- if you were disabled, nobody would
9 ever be able to fall under the Act.

11:31:35

10 The trouble is many disabilities involve giving them a
11 fan because there is not enough air-conditioning or
12 different chairs. But they still meet the physical and
13 intellectual requirements for the job.

11:32:00

14 If you are allergic to his aftershave lotion or
15 something, then the company can hose him off every
16 morning.

17 And I guarantee you that didn't have to do with the
18 graduate professional school criterion, which is
19 universally accepted, apparently.

11:32:24

20 A high school administrator from another state told me
21 once the only two things that can bankrupt a university, a
22 law school, and a medical school -- I don't know why the
23 law school. I mean, the law school doesn't require
24 anything more sophisticated than French poetry -- but
25 today is the equipment in a medical school. And people

11:33:11

1 are always saying, oh, it was so much cheaper in the '50s.
2 Yeah. They'd pat you on your head and say you are going
3 to die.

11:33:31

4 I was talking to a young woman about naming children
5 and something came up about having picked two names, one
6 male and one female, for our future child. And she said
7 why would -- I mean, you know what it was.

11:34:05

8 How would we know? Well, ultrasound, you didn't have
9 it. CAT scan, didn't have it. MRI, didn't have it. You
10 wouldn't give them an x-ray. And so you found out the day
11 the kid showed up whether you had a -- which name you were
12 going to use.

13 And so the question was: What did you -- what did you
14 do? Paint the child's room blue or pink in advance?

11:34:23

15 And I said, I didn't. The sensible choice is do
16 nothing until the kid arrives because the kid is not going
17 to know what color the room is for some time.

18 MS. ARDOLINO: Or go with green.

11:34:42

19 THE COURT: Yeah. I mean, they are happy to be
20 there. And worse, if you had, say, a girl's room in pink,
21 that might affect her future employability.

22 Anything else anybody needs at the moment?

11:35:19

23 MR. SILVER: Will they -- are they going to be
24 ordered to provide us a HIPAA? So once we have the
25 records, we'll already have the HIPAA to subpoena --

1 THE COURT: He can get the records and hand them
2 to you. They are his records.

3 MS. ARDOLINO: I think that -- yeah. I think
4 that we had discussed they were either going to provide
11:35:32 5 the records themselves or provide a medical release so
6 that we could.

7 THE COURT: They are his records. Have him
8 produce them. But the list of everybody else, every
9 doctor.

11:35:44 10 MS. ARDOLINO: Right.

11 THE COURT: And his application to the foreign
12 medical school.

13 MS. TERRELL: Yes.

14 MS. ARDOLINO: And I think his current records,
11:35:54 15 school records would be useful.

16 MS. TERRELL: Yes. Would you like a release for
17 that or do you want us to --

18 MS. ARDOLINO: I think y'all may want to actually
19 provide those because they are out of the country and
11:36:06 20 so --

21 MS. TERRELL: Understood.

22 MS. ARDOLINO: -- that would be appreciated.

23 MR. SILVER: We will get any applications and the
24 responses from the medical schools as well.

11:36:17 25 THE COURT: Any medical school he applied to?

1 MR. SILVER: A what did they say kind of thing.

2 THE COURT: His application and their response.

3 MS. ARDOLINO: Yes.

4 MS. TERRELL: Yes. And, Your Honor, you

11:36:30

5 mentioned undergrad educational records, and I'm not sure
6 whether we have all his educational records from the
7 medical school portion of his education. I don't think
8 those were ordered last time either. So we would like
9 those.

11:36:46

10 THE COURT: Did you ever just ask for them? They
11 are his records. Give them to him.

12 MR. SILVER: I'm sure he has his transcript by
13 now.

11:37:03

14 THE COURT: Whatever Nobel prizes, football
15 trophies, or whatever.

16 And foreign countries are somewhat different than us.
17 They are not as trustingly paper oriented. So a friend of
18 mine was living in Spain, and he wrote me and said he
19 needed a letter of character for him to renew it for
20 another ten years. So which I happily did. And having
21 known him since middle school, I omitted some things.

11:37:27

22 And so I get a letter back from him that says they
23 said it was no good. There were no stamps on it. So I
24 reproduced the letter and I got my deputy clerk to get me
25 any stamp we could use that wouldn't actively make it

11:37:52

1 something it wasn't. And I put five stamps on it. It
2 sailed right through. He got his visa.

3 Anything else?

4 MS. ARDOLINO: Are you going to be issuing an
11:38:22 5 order or any type of discovery scheduling order or do you
6 want us to just go ahead --

7 THE COURT: No. Because you don't know what you
8 need until after you get this stuff. One step at a time.

9 MS. ARDOLINO: That's where -- we are onboard
11:38:35 10 with that. I was just wondering what to anticipate.

11 THE COURT: It is common for courts to issue, as
12 you undoubtedly know, a docket control order when the case
13 is filed. And I will guarantee you that no case has ever
14 been tried on the date set in an order.

11:38:58 15 When I first got here -- I had all my docket was
16 inherited. So I had about 900 cases that had been
17 untouched because they came from the dockets of dead
18 judges. So they had shrunk over the years to the point
19 where if you added them together it was the equivalent of
11:39:18 20 a regular docket, except mine were all two years or more
21 untouched.

22 And so these guys were saying they had not quite done
23 it, but they will name their experts pretty soon. I know
24 the deadline is -- and I said, What kind of expert are you
11:39:35 25 going to have in this case?

1 Well, none, if it's up to us, but that standard
2 scheduling order, you know, they must be designated by a
3 certain date. So if I wanted them designated, they were
4 going to find me a couple of experts.

11:39:51 5 And I said, no. It should say if you need one, they
6 have to be done by now.

7 So I like to take it -- you know, every once in a
8 while somebody uncovers a release of the whole thing stuck
9 in somebody's file or all manner of stuff.

11:40:13 10 I would like to do civil trials where I can give the
11 jury and counsel the complete charge, but the cases seldom
12 end up being exactly like they look at the start. So I
13 have broken it down into some lengthy preliminary ones and
14 then supplemental ones because it's kind of silly to have
11:40:40 15 people sit there for three days and say this is what you
16 were supposed to be paying attention to and this is the
17 things you ought to consider while you are listening to
18 the witnesses but you have already listened to them.

19 Even worse is the judges who don't give the
11:40:55 20 instructions until after the oral argument. What is the
21 lawyer -- the lawyer doesn't know what the judge is going
22 to say. They should have an idea, but judges don't always
23 do what the lawyer wants.

24 So I like my juries. They are thoughtful,
11:41:17 25 hard-working people. This is my 40th year on the bench,

1 and I have probably set aside three verdicts.

2 Anything else?

3 MS. TERRELL: No, Your Honor.

4 MS. ARDOLINO: No, Your Honor.

11:41:35

5 THE COURT: If y'all come up with something that
6 you think you really need to do that we didn't cover, you
7 jointly send me -- file a pleading that says additional
8 discovery. Tell me what it is. And I'll probably say
9 yes, but I have been known to say no.

11:42:04

10 MS. ARDOLINO: Thank you, Your Honor.

11 THE COURT: All right.

12 (Proceedings concluded at 11:42 a.m.)

13 *Date: August 5, 2019*

14 ***COURT REPORTER'S CERTIFICATE***

15 *I, Laura Wells, certify that the foregoing is a*
16 *correct transcript from the record of proceedings in the*
17 *above-entitled matter.*

18

19 /s/ Laura Wells

20 *Laura Wells, CRR, RMR*

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	- 15:25	appreciated ^[1] - 21:22	C
'50s ^[1] - 20:1	accomplish ^[1] - 2:16	ARDOLINO ^[40] - 2:3, 3:20, 4:12, 6:1, 7:23, 8:4, 8:10, 8:14, 8:17, 8:24, 10:14, 10:22, 11:3, 11:9, 12:1, 12:6, 12:11, 12:16, 13:14, 15:20, 16:1, 16:13, 16:24, 17:8, 17:10, 17:13, 18:3, 18:9, 19:4, 20:18, 21:3, 21:10, 21:14, 21:18, 21:22, 22:3, 23:4, 23:9, 25:4, 25:10	cannot ^[2] - 19:5, 19:6
/	accredited ^[1] - 8:22		capable ^[1] - 19:6
/s ^[1] - 25:19	act ^[1] - 16:9		care ^[3] - 5:9, 9:5, 13:2
1	Act ^[3] - 6:2, 10:11, 19:9		case ^[9] - 7:11, 7:14, 7:21, 10:9, 10:11, 19:2, 23:12, 23:13, 23:25
100 ^[1] - 4:9	acting ^[1] - 7:3		cases ^[2] - 23:16, 24:11
11:42 ^[1] - 25:12	actively ^[1] - 22:25		CAT ^[1] - 20:9
2	ADA ^[2] - 5:20, 6:3	Ardolino ^[1] - 2:3	catch ^[2] - 5:12, 5:13
2019 ^[1] - 25:13	add ^[2] - 14:23, 16:18	argument ^[1] - 24:20	caused ^[1] - 14:13
20s ^[1] - 14:11	added ^[1] - 23:19	arrives ^[1] - 20:16	certain ^[1] - 24:3
3	additional ^[2] - 9:24, 25:7	articles ^[1] - 8:9	certainly ^[2] - 8:6, 8:15
30 ^[1] - 14:10	administrator ^[1] - 19:20	aside ^[1] - 25:1	CERTIFICATE ^[1] - 25:14
4	administrators ^[1] - 9:1	attention ^[1] - 24:16	certify ^[1] - 25:15
40th ^[1] - 24:25	admirer ^[1] - 2:15	Attorney ^[1] - 2:3	chairs ^[1] - 19:12
5	admission ^[1] - 3:23	attrition ^[1] - 13:17	character ^[1] - 22:19
5 ^[1] - 25:13	admitted ^[1] - 4:5	August ^[1] - 25:13	charge ^[1] - 24:11
8	advance ^[1] - 20:14	authorization ^[2] - 10:18, 15:17	cheaper ^[1] - 20:1
8 ^[1] - 18:16	affect ^[1] - 20:21	available ^[2] - 13:10, 18:25	check ^[1] - 16:8
9	aftershave ^[1] - 19:14	awarded ^[1] - 7:10	child ^[2] - 11:24, 20:6
900 ^[1] - 23:16	agreements ^[1] - 2:20	aware ^[1] - 16:6	child's ^[1] - 20:14
A	ahead ^[3] - 11:21, 17:23, 23:6	B	children ^[1] - 20:4
A&M ^[10] - 2:6, 2:7, 6:14, 6:15, 6:17, 7:20, 9:2, 9:3, 13:19, 15:5	air ^[1] - 19:11	background ^[1] - 19:1	chiropractors ^[1] - 14:24
A&M's ^[1] - 8:6	air-conditioning ^[1] - 19:11	bankrupt ^[1] - 19:21	choice ^[3] - 16:23, 17:24, 20:15
a.m ^[1] - 25:12	airport ^[1] - 5:2	bar ^[2] - 13:13, 13:16	chose ^[2] - 16:22, 16:25
able ^[4] - 7:3, 7:7, 9:10, 19:9	allegation ^[1] - 16:20	Barger ^[1] - 4:20	chosen ^[1] - 17:9
above-entitled ^[1] - 25:17	allegations ^[1] - 3:12	based ^[1] - 6:10	Christi ^[1] - 4:19
abroad ^[1] - 16:5	allergic ^[1] - 19:14	bench ^[1] - 24:25	chunk ^[1] - 18:24
accepted ^[2] - 18:21, 19:19	almost ^[1] - 18:16	best ^[2] - 13:9, 18:25	Circuit ^[3] - 6:2, 7:24, 10:6
accommodation ^[2] - 7:21, 16:12	alternate ^[1] - 13:21	better ^[1] - 9:11	citations ^[2] - 18:15, 18:18
accommodations ^[1]	annually ^[1] - 14:17	between ^[1] - 2:19	cited ^[1] - 19:3
	answer ^[1] - 7:11	blue ^[1] - 20:14	City ^[1] - 10:10
	anticipate ^[1] - 23:10	born ^[1] - 11:24	civil ^[1] - 24:10
	anyway ^[2] - 11:11, 15:4	Brennan ^[1] - 19:2	claim ^[7] - 5:20, 6:2, 6:3, 7:5, 7:12, 10:5, 10:7
	Appeals ^[4] - 5:20, 10:9, 16:10, 19:3	broken ^[1] - 24:13	claiming ^[1] - 5:22
	applicant ^[1] - 4:3	brother ^[1] - 18:13	claims ^[1] - 12:7
	application ^[3] - 3:23, 21:11, 22:2	brother-in-law ^[1] - 18:13	class ^[1] - 4:8
	applications ^[4] - 12:2, 15:22, 15:24, 21:23	brought ^[1] - 11:24	classes ^[1] - 17:5
	applied ^[4] - 6:16, 6:17, 7:9, 21:25		Clement ^[3] - 18:3, 18:9,
	apply ^[2] - 8:18, 13:6		

<p>18:11 clerk ^[1] - 22:24 CLERK ^[1] - 18:6 client ^[4] - 3:12, 4:4, 4:10, 9:9 college ^[1] - 6:11 color ^[1] - 20:17 comfort ^[1] - 11:6 coming ^[1] - 13:1 commercial ^[1] - 9:7 common ^[1] - 23:11 company ^[1] - 19:15 comparators ^[1] - 13:21 compare ^[1] - 6:11 compelled ^[1] - 16:11 competitively ^[1] - 17:4 complete ^[1] - 24:11 concluded ^[1] - 25:12 conditioning ^[1] - 19:11 confection ^[1] - 18:15 confirm ^[1] - 3:11 congratulations ^[1] - 2:11 consider ^[1] - 24:17 constructive ^[5] - 5:22, 6:4, 6:6, 6:23, 16:15 contention ^[1] - 8:6 contents ^[1] - 12:12 context ^[2] - 15:23, 15:24 control ^[1] - 23:12 copy ^[2] - 18:4, 18:6 Corpus ^[2] - 4:19, 5:2 correct ^[9] - 3:25, 6:1, 8:4, 10:22, 12:11, 17:8, 17:10, 25:16 correlated ^[1] - 7:16 cost ^[1] - 13:8 counsel ^[1] - 24:11 Counsel ^[1] - 2:6 counselor ^[1] - 10:23 count ^[1] - 9:14 countries ^[1] - 22:16 country ^[3] - 11:17, 12:24, 21:19 counts ^[1] - 4:8</p>	<p>couple ^[2] - 18:18, 24:4 coupled ^[1] - 12:8 course ^[1] - 12:8 Court ^[6] - 5:19, 10:6, 10:9, 14:5, 16:10, 19:3 COURT ^[8] - 2:7, 2:11, 2:14, 2:22, 3:1, 3:3, 3:8, 3:14, 3:17, 3:22, 4:1, 4:7, 4:11, 4:15, 4:18, 4:21, 5:1, 5:16, 5:25, 6:10, 6:15, 6:22, 7:2, 8:3, 8:8, 8:12, 8:16, 8:23, 8:25, 9:12, 9:21, 10:8, 10:20, 10:23, 11:1, 11:4, 11:14, 11:16, 11:20, 11:23, 12:4, 12:10, 12:15, 12:17, 13:12, 13:15, 13:20, 13:25, 14:3, 14:9, 14:12, 15:7, 15:11, 15:15, 15:18, 15:25, 16:2, 16:8, 16:16, 16:22, 17:6, 17:9, 17:11, 17:14, 17:21, 18:8, 18:12, 19:5, 20:19, 21:1, 21:7, 21:11, 21:25, 22:2, 22:10, 22:14, 23:7, 23:11, 25:5, 25:11, 25:14 courts ^[1] - 23:11 cover ^[2] - 8:16, 25:6 criterion ^[1] - 19:18 CRR ^[1] - 25:20 curiam ^[2] - 18:10, 18:14 current ^[2] - 12:2, 21:14</p>	<p>defendant ^[1] - 2:4 defendants' ^[1] - 10:14 denied ^[1] - 10:6 Dennis ^[2] - 18:9, 18:12 Department ^[1] - 10:11 depose ^[1] - 12:13 deposition ^[2] - 12:9, 12:22 deputy ^[1] - 22:24 designated ^[2] - 24:2, 24:3 despite ^[1] - 18:1 die ^[1] - 20:3 different ^[3] - 5:14, 19:12, 22:16 directly ^[1] - 10:18 disabilities ^[1] - 19:10 disability ^[3] - 6:21, 7:1, 7:9 disabled ^[2] - 7:6, 19:8 discharge ^[2] - 5:22, 6:24 discovery ^[6] - 2:18, 2:25, 3:2, 10:15, 23:5, 25:8 discriminated ^[2] - 6:5, 6:8 discrimination ^[1] - 7:5 discussed ^[1] - 21:4 discussing ^[1] - 2:18 dismissal ^[4] - 3:15, 6:4, 6:6, 17:2 dismissed ^[4] - 3:12, 6:3, 16:20, 16:21 dissented ^[2] - 18:4, 18:11 docket ^[4] - 18:7, 23:12, 23:15, 23:20 dockets ^[1] - 23:17 doctor ^[4] - 8:25, 11:23, 11:25, 21:9 doctor's ^[1] - 14:18 doctors ^[3] - 7:16, 14:16, 14:24 documents ^[1] - 12:6 done ^[2] - 23:22, 24:6 down ^[5] - 4:24, 5:17, 14:14, 14:22, 24:13</p>	<p>driver's ^[1] - 9:6 drivers ^[1] - 9:7 drop ^[1] - 13:5 due ^[1] - 6:21</p>
			<p>E</p>
			<p>Edith ^[1] - 18:3 education ^[1] - 22:7 educational ^[2] - 22:5, 22:6 eight ^[2] - 10:12, 18:18 either ^[3] - 10:17, 21:4, 22:8 eligible ^[2] - 17:2, 17:3 elsewhere ^[1] - 9:3 Emily ^[2] - 2:3, 2:19 employability ^[1] - 20:21 employment ^[1] - 7:5 end ^[5] - 3:18, 3:20, 3:22, 24:12 English ^[1] - 12:5 enrolled ^[2] - 11:11, 11:12 entire ^[1] - 14:12 entitled ^[1] - 25:17 equipment ^[1] - 19:25 equivalent ^[1] - 23:19 essential ^[2] - 8:1, 8:6 establish ^[1] - 3:10 exactly ^[2] - 3:4, 24:12 exam ^[5] - 8:19, 9:2, 13:13, 13:16 exams ^[1] - 13:5 except ^[1] - 23:20 execute ^[2] - 10:17, 15:16 exists ^[2] - 3:9 experience ^[1] - 14:5 expert ^[1] - 23:24 experts ^[4] - 12:20, 23:23, 24:4 explanation ^[1] - 9:2 extent ^[2] - 14:19, 15:21 extra ^[1] - 12:24</p>

F	freestanding ^[1] - 13:22 French ^[1] - 19:24 frequency ^[2] - 13:4, 13:5 friend ^[2] - 4:24, 22:17 friends ^[1] - 5:11 function ^[1] - 8:1 functions ^[1] - 9:11 furnish ^[1] - 10:20 future ^[3] - 17:1, 20:6, 20:21	helpful ^[1] - 4:6 helps ^[1] - 5:18 Hermansen ^[1] - 4:20 high ^[1] - 19:20 himself ^[1] - 6:11 hint ^[1] - 2:22 HIPAA ^[2] - 20:24, 20:25 Holly ^[1] - 2:2 honest ^[1] - 5:13 Honor ^[11] - 5:19, 9:8, 10:14, 10:25, 11:15, 15:6, 16:18, 22:4, 25:3, 25:4, 25:10 hose ^[1] - 19:15 Houston ^[2] - 10:10 Hunt ^[1] - 4:19	issuing ^[2] - 14:5, 23:4 Italian ^[1] - 11:25 Italy ^[1] - 11:24 itself ^[1] - 8:19
face ^[1] - 16:14 fact ^[2] - 3:8, 7:23 facts ^[4] - 3:10, 7:12, 9:9, 12:18 factual ^[1] - 17:15 fail ^[1] - 9:23 failed ^[2] - 9:18, 17:17 failing ^[1] - 9:20 failure ^[1] - 18:20 Fair ^[1] - 10:11 fall ^[1] - 19:9 fan ^[1] - 19:11 father ^[2] - 5:3, 11:25 fell ^[1] - 14:13 fellow ^[1] - 5:4 female ^[1] - 20:6 FERPA ^[1] - 15:16 Fifth ^[3] - 6:1, 7:24, 10:6 figure ^[1] - 12:17 file ^[3] - 7:4, 24:9, 25:7 filed ^[1] - 23:13 fine ^[1] - 5:4 Fire ^[1] - 10:10 firm ^[1] - 4:22 first ^[11] - 3:18, 8:20, 9:20, 10:20, 12:10, 13:6, 17:6, 17:19, 18:16, 23:15 fish ^[2] - 5:12, 5:17 fisherman ^[1] - 4:25 fishing ^[5] - 4:23, 5:5, 5:6, 5:14, 5:15 five ^[3] - 18:17, 18:25, 23:1 flunked ^[2] - 17:16, 17:21 fly ^[2] - 4:24, 5:14 fly-fishing ^[1] - 5:14 football ^[1] - 22:14 foregoing ^[1] - 25:15 foreign ^[2] - 21:11, 22:16 forget ^[1] - 9:14 forms ^[1] - 11:3 fortune ^[1] - 13:8 four ^[1] - 18:17	G General ^[1] - 2:5 general ^[1] - 13:17 General's ^[1] - 2:4 generously ^[1] - 16:16 girl's ^[1] - 20:20 graduate ^[4] - 2:15, 6:11, 6:17, 19:18 graduated ^[1] - 2:10 graduation ^[1] - 2:11 grandson ^[1] - 2:7 Graves ^[1] - 18:9 great ^[1] - 5:9 green ^[1] - 20:18 guarantee ^[2] - 19:17, 23:13 guess ^[3] - 7:4, 8:18, 15:19 guys ^[1] - 23:22	J job ^[4] - 2:8, 7:3, 7:4, 19:13 join ^[1] - 17:5 jointly ^[1] - 25:7 judge ^[2] - 5:2, 24:21 Judge ^[2] - 18:11, 18:12 judges ^[3] - 23:18, 24:19, 24:22 juries ^[1] - 24:24 jury ^[1] - 24:11	
	I idea ^[3] - 13:4, 13:18, 24:22 impatient ^[1] - 5:7 important ^[1] - 8:9 impossible ^[1] - 18:16 improper ^[1] - 3:12 include ^[1] - 14:24 indifferent ^[1] - 7:19 information ^[1] - 4:12 inherited ^[1] - 23:16 injured ^[1] - 17:14 instead ^[1] - 10:12 instructions ^[1] - 24:20 intellectual ^[1] - 19:13 intentionally ^[2] - 6:5, 6:8 interim ^[1] - 13:13 interrogatories ^[1] - 3:7 interscholastic ^[1] - 17:25 invitations ^[1] - 17:22 involve ^[1] - 19:10 is/was ^[1] - 18:12 issue ^[3] - 7:24, 11:9, 23:11 issued ^[1] - 18:10 issues ^[4] - 6:4, 6:7, 6:25, 8:5	K keep ^[1] - 9:5 keeps ^[1] - 14:15 key ^[1] - 15:20 kid ^[3] - 20:11, 20:16 kind ^[6] - 10:16, 14:5, 18:14, 22:1, 23:24, 24:14 kinds ^[2] - 15:1 known ^[2] - 22:21, 25:9	
	H half ^[1] - 18:19 half-page ^[1] - 18:19 hand ^[1] - 21:1 happily ^[1] - 22:20 happy ^[2] - 9:5, 20:19 hard ^[1] - 24:25 hard-working ^[1] - 24:25 Hayden ^[6] - 4:21, 4:23, 5:1, 5:3, 5:5, 5:6 head ^[1] - 20:2 Head ^[4] - 4:21, 5:1, 5:3	L Labor ^[1] - 10:11 lack ^[1] - 16:11 large ^[1] - 13:21 last ^[1] - 22:8 late ^[1] - 14:11 Laura ^[3] - 25:15, 25:19, 25:20 LAW ^[1] - 18:6 law ^[7] - 13:16, 18:12, 18:13, 18:15, 19:22, 19:23 lawsuit ^[1] - 9:12 lawyer ^[5] - 4:17, 5:3, 24:21, 24:23 left ^[2] - 5:20, 6:2 legally ^[1] - 15:3 lengthy ^[1] - 24:13	

<p>letter^[3] - 22:19, 22:22, 22:24</p> <p>letters^[1] - 8:20</p> <p>levels^[1] - 9:3</p> <p>license^[2] - 8:18, 9:7</p> <p>licensing^[2] - 8:10, 8:15</p> <p>life^[2] - 4:17, 14:12</p> <p>limit^[1] - 11:1</p> <p>limitations^[2] - 4:4, 10:10</p> <p>list^[3] - 10:20, 14:21, 21:8</p> <p>listened^[1] - 24:18</p> <p>listening^[1] - 24:17</p> <p>litigation^[1] - 15:13</p> <p>living^[1] - 22:18</p> <p>look^[7] - 15:7, 15:9, 15:17, 15:18, 16:3, 24:12</p> <p>looking^[3] - 10:16, 11:13, 12:1</p> <p>lotion^[1] - 19:14</p> <p>lucky^[1] - 5:16</p>	<p>middle^[2] - 13:15, 22:21</p> <p>might^[1] - 20:21</p> <p>mine^[3] - 4:24, 22:18, 23:20</p> <p>missed^[1] - 18:18</p> <p>missing^[1] - 3:4</p> <p>moment^[1] - 20:22</p> <p>money^[1] - 7:12</p> <p>months^[4] - 2:24, 3:2, 3:3, 7:8</p> <p>morning^[2] - 11:23, 19:16</p> <p>most^[3] - 9:1, 12:20, 12:22</p> <p>motion^[1] - 10:4</p> <p>MR^[28] - 2:5, 2:9, 2:13, 4:9, 4:14, 4:17, 4:19, 4:23, 5:11, 5:17, 6:14, 8:13, 9:17, 9:23, 13:11, 13:19, 13:24, 14:1, 14:4, 15:6, 15:9, 15:12, 15:16, 17:19, 20:23, 21:23, 22:1, 22:12</p> <p>MRI^[1] - 20:9</p> <p>MS^[70] - 2:2, 2:3, 2:18, 2:24, 3:2, 3:6, 3:11, 3:16, 3:20, 3:21, 3:25, 4:6, 4:12, 5:14, 6:1, 6:13, 6:21, 6:25, 7:23, 8:4, 8:10, 8:14, 8:17, 8:24, 9:8, 10:14, 10:22, 10:25, 11:3, 11:8, 11:9, 11:15, 11:17, 11:22, 12:1, 12:6, 12:11, 12:16, 13:14, 14:11, 15:20, 16:1, 16:6, 16:13, 16:18, 16:24, 17:8, 17:10, 17:13, 17:17, 17:20, 18:3, 18:9, 19:4, 20:18, 21:3, 21:10, 21:13, 21:14, 21:16, 21:18, 21:21, 21:22, 22:3, 22:4, 23:4, 23:9, 25:3, 25:4, 25:10</p> <p>must^[1] - 24:2</p> <p>mutual^[1] - 5:12</p>	<p>naming^[1] - 20:4</p> <p>national^[1] - 8:19</p> <p>nationwide^[2] - 8:13, 8:14</p> <p>necessarily^[1] - 17:2</p> <p>need^[10] - 2:23, 3:3, 3:8, 4:2, 12:25, 13:4, 15:7, 23:8, 24:5, 25:6</p> <p>needed^[2] - 10:15, 22:19</p> <p>needs^[3] - 10:20, 14:14, 20:22</p> <p>nerve^[1] - 14:14</p> <p>never^[1] - 9:19</p> <p>new^[1] - 17:5</p> <p>nice^[1] - 2:12</p> <p>nine^[2] - 7:8, 15:1</p> <p>Nobel^[1] - 22:14</p> <p>nobody^[2] - 19:8</p> <p>none^[1] - 24:1</p> <p>normal^[1] - 5:15</p> <p>nothing^[1] - 20:16</p> <p>number^[3] - 18:15, 18:21, 18:22</p> <p>nurses^[1] - 15:2</p>	<p>otherwise^[3] - 19:3, 19:5, 19:7</p> <p>ought^[3] - 4:15, 12:25, 24:17</p> <p>ourselves^[1] - 15:10</p> <p>outside^[2] - 8:19, 11:18</p>
M		O	P
<p>ma'am^[1] - 6:22</p> <p>male^[1] - 20:6</p> <p>manner^[1] - 24:9</p> <p>Marty^[1] - 2:19</p> <p>matter^[2] - 16:11, 25:17</p> <p>McKibben^[1] - 4:20</p> <p>mean^[5] - 17:15, 18:24, 19:23, 20:7, 20:19</p> <p>mechanics^[1] - 3:14</p> <p>medical^[33] - 4:8, 6:5, 6:16, 6:17, 7:4, 8:1, 8:15, 8:18, 8:22, 10:2, 10:17, 10:21, 11:1, 11:12, 12:2, 12:3, 12:12, 13:18, 13:23, 14:1, 14:4, 14:7, 15:22, 16:20, 17:25, 19:22, 19:25, 21:5, 21:12, 21:24, 21:25, 22:7</p> <p>meet^[1] - 19:12</p> <p>meeting^[1] - 19:7</p> <p>memorializing^[1] - 14:6</p> <p>mentioned^[1] - 22:5</p>	<p>name^[4] - 11:18, 14:18, 20:11, 23:23</p> <p>named^[1] - 5:2</p> <p>names^[1] - 20:5</p>	<p>office^[1] - 2:4</p> <p>often^[2] - 5:13, 9:22</p> <p>old^[2] - 14:3, 14:9</p> <p>omitted^[1] - 22:21</p> <p>onboard^[1] - 23:9</p> <p>once^[4] - 14:21, 19:21, 20:24, 24:7</p> <p>one^[13] - 5:5, 7:25, 8:4, 8:25, 11:16, 13:6, 13:24, 16:22, 18:17, 20:5, 20:6, 23:8, 24:5</p> <p>ones^[2] - 24:13, 24:14</p> <p>opinion^[2] - 18:10, 18:14</p> <p>opportunities^[1] - 5:23</p> <p>opportunity^[1] - 18:1</p> <p>oral^[1] - 24:20</p> <p>order^[7] - 14:6, 16:25, 23:5, 23:12, 23:14, 24:2</p> <p>ordered^[2] - 20:24, 22:8</p> <p>oriented^[1] - 22:17</p>	<p>page^[2] - 18:15, 18:19</p> <p>Page^[1] - 18:16</p> <p>paint^[1] - 20:14</p> <p>panel^[2] - 18:2, 18:10</p> <p>paper^[1] - 22:17</p> <p>paragraph^[2] - 18:16, 18:19</p> <p>paralegals^[1] - 4:16</p> <p>part^[3] - 2:12, 8:6, 8:21</p> <p>partner's^[1] - 18:12</p> <p>pass^[7] - 9:13, 9:14, 9:25, 10:2, 17:19, 17:23, 18:22</p> <p>passage^[1] - 7:25</p> <p>passed^[2] - 13:6, 17:25</p> <p>past^[1] - 14:5</p> <p>pat^[1] - 20:2</p> <p>pay^[1] - 12:24</p> <p>paying^[1] - 24:16</p> <p>people^[10] - 4:8, 5:1, 7:4, 9:21, 13:5, 14:25, 19:25, 24:15, 24:25</p> <p>per^[3] - 18:10, 18:14, 18:15</p> <p>perform^[1] - 9:11</p> <p>period^[1] - 10:12</p> <p>permanent^[1] - 7:9</p> <p>permanently^[1] - 7:6</p> <p>permission^[1] - 15:7</p> <p>personnel^[1] - 11:2</p> <p>perspective^[1] - 10:15</p> <p>pertinent^[1] - 9:9</p> <p>physical^[1] - 19:12</p> <p>physician^[1] - 10:23</p> <p>physicians^[1] - 12:14</p> <p>physiologist^[1] - 7:15</p> <p>pick^[2] - 13:20, 18:23</p> <p>picked^[1] - 20:5</p>

<p>pink^[2] - 20:14, 20:20</p> <p>plaintiff^[2] - 2:2, 16:19</p> <p>plaintiffs^[1] - 12:9</p> <p>plaintiffs^[1] - 3:6</p> <p>plausibly^[2] - 16:14, 16:17</p> <p>plays^[1] - 9:2</p> <p>pleaded^[2] - 16:14, 16:25</p> <p>pleading^[1] - 25:7</p> <p>pleadings^[2] - 16:14, 16:19</p> <p>poetry^[1] - 19:24</p> <p>point^[2] - 9:9, 23:18</p> <p>portion^[1] - 22:7</p> <p>possibility^[1] - 12:14</p> <p>possible^[2] - 12:9, 12:12</p> <p>practical^[1] - 16:11</p> <p>practice^[2] - 4:18, 12:17</p> <p>precise^[2] - 9:1, 14:15</p> <p>preliminary^[1] - 24:13</p> <p>preoccupied^[1] - 14:17</p> <p>preserve^[1] - 16:25</p> <p>pretty^[1] - 23:23</p> <p>priest^[1] - 11:5</p> <p>private^[1] - 13:22</p> <p>prizes^[1] - 22:14</p> <p>problem^[3] - 14:18, 17:11, 17:15</p> <p>problems^[3] - 6:19, 6:22, 6:23</p> <p>proceedings^[1] - 25:16</p> <p>PROCEEDINGS^[1] - 2:1</p> <p>Proceedings^[1] - 25:12</p> <p>process^[1] - 13:12</p> <p>produce^[1] - 21:8</p> <p>production^[1] - 3:7</p> <p>professional^[2] - 8:11, 19:18</p> <p>program^[3] - 8:1, 8:7, 8:11</p> <p>programs^[1] - 8:22</p> <p>properly^[1] - 9:10</p> <p>provide^[6] - 10:18, 15:13, 20:24, 21:4,</p>	<p>21:5, 21:19</p> <p>provider^[2] - 10:21, 14:7</p> <p>providers^[2] - 14:2, 14:4</p> <p>psychologist^[1] - 7:15</p> <p>psychologists^[2] - 14:25</p> <p>psychotherapy^[1] - 14:25</p> <p>purposes^[1] - 3:13</p> <p>put^[2] - 14:14, 23:1</p>	<p>refer^[1] - 19:6</p> <p>referred^[1] - 7:14</p> <p>reflect^[1] - 16:4</p> <p>regard^[2] - 14:1, 14:4</p> <p>regular^[2] - 8:21, 23:20</p> <p>rehab^[1] - 6:2</p> <p>rehabilitation^[1] - 11:7</p> <p>Rehabilitation^[1] - 6:2</p> <p>reinstate^[1] - 10:7</p> <p>reinstatement^[2] - 10:5, 10:6</p> <p>relate^[2] - 15:10, 15:21</p> <p>related^[1] - 12:7</p> <p>release^[3] - 21:5, 21:16, 24:8</p> <p>relevant^[1] - 15:23</p> <p>remaining^[2] - 10:16, 11:9</p> <p>remand^[1] - 8:5</p> <p>remanded^[1] - 7:24</p> <p>remember^[3] - 7:2, 14:19, 18:2</p> <p>renew^[1] - 22:19</p> <p>REPORTER'S^[1] - 25:14</p> <p>representing^[1] - 2:4</p> <p>reproduced^[1] - 22:24</p> <p>request^[1] - 10:7</p> <p>requests^[1] - 3:7</p> <p>require^[1] - 19:23</p> <p>requirement^[1] - 8:10</p> <p>requirements^[2] - 19:7, 19:13</p> <p>response^[1] - 22:2</p> <p>responses^[1] - 21:24</p> <p>result^[1] - 6:25</p> <p>retake^[3] - 13:5, 17:22, 17:23</p> <p>retaken^[1] - 18:1</p> <p>retired^[1] - 5:2</p> <p>reverse^[1] - 10:8</p> <p>review^[1] - 18:15</p> <p>RMR^[1] - 25:20</p> <p>role^[1] - 9:2</p> <p>room^[3] - 20:14, 20:17, 20:20</p>	<p>roughly^[3] - 14:9, 14:11, 14:15</p> <p>ruled^[1] - 7:20</p>
S			
<p>sailed^[1] - 23:2</p> <p>saw^[1] - 11:23</p> <p>scan^[1] - 20:9</p> <p>scheduling^[2] - 23:5, 24:2</p> <p>school^[32] - 2:15, 4:8, 5:22, 6:5, 6:12, 6:16, 6:18, 6:19, 6:20, 7:4, 7:18, 8:22, 9:24, 10:2, 11:12, 12:2, 13:16, 15:22, 16:9, 16:20, 19:18, 19:20, 19:22, 19:23, 19:25, 21:12, 21:15, 21:25, 22:7, 22:21</p> <p>schooling^[1] - 15:10</p> <p>schools^[4] - 12:3, 13:22, 13:23, 21:24</p> <p>schoolwork^[1] - 6:20</p> <p>second^[6] - 3:20, 3:21, 3:22, 13:15, 17:12, 17:24</p> <p>second-year^[1] - 17:24</p> <p>Security^[1] - 7:10</p> <p>see^[4] - 2:20, 11:5, 16:3, 16:8</p> <p>seeking^[2] - 3:10, 3:11</p> <p>seem^[1] - 5:6</p> <p>seldom^[1] - 24:11</p> <p>selected^[2] - 17:5, 17:12</p> <p>self^[1] - 13:22</p> <p>send^[2] - 3:6, 25:7</p> <p>senior^[1] - 6:15</p> <p>sensible^[2] - 12:22, 20:15</p> <p>session^[1] - 17:7</p> <p>set^[3] - 14:22, 23:14, 25:1</p> <p>seven^[1] - 18:17</p> <p>Shaikh's^[1] - 10:16</p> <p>sheet^[1] - 18:7</p> <p>shortest^[1] - 9:1</p> <p>showed^[1] - 20:11</p> <p>shrunk^[1] - 23:18</p>	<p>qualified^[2] - 19:3, 19:6</p> <p>quit^[1] - 17:7</p> <p>quite^[1] - 23:22</p> <p>quote^[1] - 19:5</p>	<p>R</p> <p>rate^[1] - 13:18</p> <p>ray^[1] - 20:10</p> <p>re^[1] - 4:3</p> <p>re-applicant^[1] - 4:3</p> <p>read^[2] - 18:17, 19:2</p> <p>readmission^[4] - 6:7, 13:7, 17:3, 17:4</p> <p>readmissions^[1] - 18:20</p> <p>readmitted^[1] - 18:21</p> <p>readmitting^[1] - 6:9</p> <p>ready^[3] - 2:20, 7:7, 9:10</p> <p>real^[2] - 4:17, 17:11</p> <p>really^[6] - 2:12, 6:4, 7:13, 12:18, 15:2, 25:6</p> <p>reapplied^[2] - 17:4, 17:7</p> <p>reapply^[1] - 17:1</p> <p>reasonably^[1] - 13:10</p> <p>recently^[1] - 19:4</p> <p>recollection^[1] - 7:18</p> <p>record^[2] - 14:15, 25:16</p> <p>records^[18] - 10:17, 10:18, 12:2, 12:10, 12:13, 15:5, 15:21, 16:3, 20:25, 21:1, 21:2, 21:5, 21:7, 21:14, 21:15, 22:5, 22:6, 22:11</p> <p>recreational^[1] - 5:8</p>	

<p>side^[1] - 15:14</p> <p>silly^[1] - 24:14</p> <p>SILVER^[28] - 2:5, 2:9, 2:13, 4:9, 4:14, 4:17, 4:19, 4:23, 5:11, 5:17, 6:14, 8:13, 9:17, 9:23, 13:11, 13:19, 13:24, 14:1, 14:4, 15:6, 15:9, 15:12, 15:16, 17:19, 20:23, 21:23, 22:1, 22:12</p> <p>Silver^[2] - 2:5, 13:8</p> <p>similarly^[1] - 4:2</p> <p>simple^[1] - 7:11</p> <p>sit^[1] - 24:15</p> <p>situated^[1] - 4:2</p> <p>six^[4] - 2:24, 3:2, 3:3, 18:17</p> <p>slash^[1] - 8:25</p> <p>small^[1] - 11:24</p> <p>so-called^[1] - 12:20</p> <p>Social^[1] - 7:9</p> <p>someone^[1] - 5:7</p> <p>somewhat^[1] - 22:16</p> <p>son^[1] - 2:9</p> <p>soon^[1] - 23:23</p> <p>sophisticated^[1] - 19:24</p> <p>sort^[1] - 16:14</p> <p>Spain^[1] - 22:18</p> <p>spiritual^[1] - 10:24</p> <p>stamp^[1] - 22:25</p> <p>stamps^[2] - 22:23, 23:1</p> <p>stand^[1] - 8:21</p> <p>standard^[1] - 24:1</p> <p>Standards^[1] - 10:11</p> <p>start^[1] - 24:12</p> <p>state^[2] - 13:21, 19:20</p> <p>States^[3] - 8:21, 9:4, 9:5</p> <p>statistics^[1] - 13:17</p> <p>stayed^[2] - 9:15, 9:17</p> <p>step^[3] - 7:25, 9:25, 23:8</p> <p>Stewart^[1] - 19:2</p> <p>stick^[1] - 14:23</p> <p>still^[3] - 7:2, 7:3, 19:12</p> <p>strongly^[1] - 7:17</p> <p>stuck^[2] - 16:22, 24:8</p>	<p>student^[1] - 17:25</p> <p>students^[3] - 13:18, 18:22</p> <p>studied^[1] - 17:7</p> <p>studies^[1] - 8:8</p> <p>study^[1] - 9:24</p> <p>stuff^[4] - 10:24, 15:3, 23:8, 24:9</p> <p>sub^[1] - 14:25</p> <p>sub-psychologists^[1] - 14:25</p> <p>subpoena^[1] - 20:25</p> <p>succeed^[1] - 5:10</p> <p>supplemental^[1] - 24:14</p> <p>supply^[1] - 4:12</p> <p>supposed^[3] - 4:10, 8:3, 24:16</p> <p>survived^[1] - 16:8</p> <p>swear^[1] - 7:12</p> <p>System^[1] - 2:6</p>	<p>8:12, 8:16, 8:23, 8:25, 9:12, 9:21, 10:8, 10:20, 10:23, 11:1, 11:4, 11:14, 11:16, 11:20, 11:23, 12:4, 12:10, 12:15, 12:17, 13:12, 13:15, 13:20, 13:25, 14:3, 14:9, 14:12, 15:7, 15:11, 15:15, 15:18, 15:25, 16:2, 16:8, 16:16, 16:22, 17:6, 17:9, 17:11, 17:14, 17:21, 18:8, 18:12, 19:5, 20:19, 21:1, 21:7, 21:11, 21:25, 22:2, 22:10, 22:14, 23:7, 23:11, 25:5, 25:11</p> <p>themselves^[1] - 21:5</p> <p>theoretically^[1] - 8:18</p> <p>therefore^[1] - 18:23</p> <p>thinks^[1] - 14:23</p> <p>thoughtful^[1] - 24:24</p> <p>three^[5] - 9:3, 14:13, 18:17, 24:15, 25:1</p> <p>Thursdays^[1] - 11:5</p> <p>today^[1] - 19:25</p> <p>together^[1] - 23:19</p> <p>Tom^[1] - 2:5</p> <p>took^[1] - 9:19</p> <p>total^[1] - 7:9</p> <p>transcript^[2] - 22:12, 25:16</p> <p>translation^[1] - 12:4</p> <p>treated^[1] - 9:10</p> <p>treating^[1] - 12:13</p> <p>trials^[1] - 24:10</p> <p>tricycle^[1] - 14:13</p> <p>tried^[1] - 23:14</p> <p>trip^[1] - 12:24</p> <p>trophies^[1] - 22:15</p> <p>trouble^[1] - 19:10</p> <p>troubled^[1] - 4:3</p> <p>truck^[1] - 9:7</p> <p>true^[4] - 4:11, 6:20, 9:6, 11:14</p> <p>trustingly^[1] - 22:17</p> <p>try^[1] - 2:9</p> <p>Tuesdays^[1] - 11:4</p> <p>turns^[1] - 7:8</p> <p>two^[7] - 6:18, 8:20, 10:12,</p>	<p>18:17, 19:21, 20:5, 23:20</p> <p>type^[2] - 14:7, 23:5</p>
U			
<p>U.S^[1] - 11:19</p> <p>ultimately^[1] - 15:2</p> <p>ultrasound^[1] - 20:8</p> <p>uncovers^[1] - 24:8</p> <p>under^[1] - 19:9</p> <p>undergrad^[1] - 22:5</p> <p>undergraduate^[3] - 6:12, 15:5, 15:21</p> <p>underneath^[1] - 18:6</p> <p>understood^[2] - 16:1, 21:21</p> <p>undoubtedly^[1] - 23:12</p> <p>United^[3] - 8:21, 9:4, 9:5</p> <p>universally^[1] - 19:19</p> <p>universities^[1] - 13:22</p> <p>university^[1] - 19:21</p> <p>untouched^[2] - 23:17, 23:21</p> <p>unwaive^[1] - 10:13</p> <p>up^[10] - 13:2, 13:9, 14:3, 18:23, 20:5, 20:11, 24:1, 24:12, 25:5</p> <p>useful^[1] - 21:15</p>			
V			
<p>verdicts^[1] - 25:1</p> <p>visa^[1] - 23:2</p> <p>voluntarily^[1] - 5:21</p>			
W			
<p>wait^[1] - 9:12</p> <p>waived^[2] - 10:5, 10:10</p> <p>wants^[1] - 24:23</p> <p>water^[1] - 10:1</p> <p>Wells^[3] - 25:15, 25:19, 25:20</p> <p>whole^[1] - 24:8</p> <p>willing^[2] - 7:7, 9:10</p> <p>withdraw^[2] - 16:21, 16:25</p> <p>withdrawal^[3] - 6:7, 16:10, 16:15</p>			

<p>withdrawals^[1] - 18:20</p> <p>withdrawn^[1] - 4:3</p> <p>withdrew^[4] - 3:18, 5:21, 6:18, 16:9</p> <p>witnesses^[1] - 24:18</p> <p>woman^[1] - 20:4</p> <p>wondering^[1] - 23:10</p> <p>worse^[2] - 20:20, 24:19</p> <p>wrote^[1] - 22:18</p>
X
x-ray ^[1] - 20:10
Y
<p>y'all^[2] - 21:18, 25:5</p> <p>year^[11] - 3:18, 3:19, 3:20, 3:21, 3:22, 7:8, 9:15, 9:18, 13:15, 17:24, 24:25</p> <p>years^[8] - 6:18, 10:12, 14:8, 18:24, 18:25, 22:20, 23:18, 23:20</p> <p>young^[2] - 5:1, 20:4</p>